Supreme Court, U. S.
FILED
FEB 2 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-978

BRIDGETON HOSPITAL ASSOCIATION, ET AL.,
Petitioners,

vs.

JANE DOE, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF AMICUS CURIAE OF THE AMERICAN HOSPITAL ASSOCIATION IN SUPPORT OF THE PETITION FOR CERTIORARI

JAY H. HEDGEPETH
WILLIAM F. STEIGMAN
840 North Lake Shore Drive
Chicago, Illinois 60611
Attorneys for Amicus Curiae American Hospital Association

Gunthorp-Warren Printing Company, Chicago • Financial 6-5565

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-978

BRIDGETON HOSPITAL ASSOCIATION, ET AL.,
Petitioners,

vs.

JANE DOE, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF AMICUS CURIAE OF THE AMERICAN HOSPITAL ASSOCIATION IN SUPPORT OF THE PETITION FOR CERTIORARI

INTEREST OF THE AMICUS

Amicus Curiae American Hospital Association respectfully presents this brief in support of Petitioners' request that a writ of certiorari issue from this Court to review the judgment of the Supreme Court of New Jersey in the above-entitled cause.

Counsel for the Petitioners and the Respondents have consented to the filing of this Brief. True copies of letters evidencing such consent have been lodged with the Clerk of the Court.

The American Hospital Association is the primary organization of hospitals and other health care institutions in this

country. It is a not-for-profit membership corporation organized under the laws of the State of Illinois, and has as it principal corporate object "to promote the welfare of the public through its leadership and its assistance to its members in the provision of better health services for all the people". It enjoys a federal income tax exemption under the provisions of Section 501(c)(6), Internal Revenue Code. Its membership includes 5,158 acute care general hospitals in the country. Those hospitals include approximately 2,500 hospitals that would be embraced by the term "non-sectarian non-profit" as used in the New Jersey Supreme Court Opinion, Appendix to Petition, p. A12.

The American Hospital Association is neutral on the issue of elective or nontherapeutic abortions. Among its hospital membership, there are "non-profit non-sectarian" hospitals that have no hesitancy in permitting use of their facilities for elective or nontherapeutic abortions. There are also a substantial number of such hospitals that, by reason of religious or moral convictions, gravely object to use of their facilities for that purpose.

The American Hospital Association has but one position on the subject, namely, that private hospitals, members of hospital medical staffs and other individuals, should not be required to participate in such abortions when they have religious or moral convictions against doing so.

Their right of choice, to participate or not to participate in such abortions, is entitled to equal protection with the rights of pregnant women and their physicians. The rights of private hospitals, particularly those that have such religious or moral convictions against participation in elective or nontherapeutic abortions, are adversely affected by the New Jersey decision.

In keeping with its position of neutrality on the subject, and in support of private hospitals adversely affected by the New Jersey decision, the American Hospital Association urges the issuance of a writ of certiorari as requested by the defendant hospitals below.

ARGUMENT

Supplementary to the position of the Petition, the American Hospital Association would also urge the following:

1. The Decision Below Improperly and Unnecessarily Infringes on the Rights of Private Hospitals.

First, the rights of hospitals adversely affected by the New Jersey decision should not be contravened and made subordinate to the rights of the original plaintiffs, both pregnant women and their attending physicians, to have elective or nontherapeutic abortions performed. The rights of pregnant women and their attending physicians can be recognized and accommodated without impinging on the coequal rights of those adversely affected by the New Jersey decision.

2. The Decision Below Gives Erroneous Construction to Decisions of this Court, is Contrary to Federal Statutory Law and is in Conflict with Proper Construction of Such Law.

Next, the New Jersey decision was patently based on erroneous construction of this Court's decisions relating to constitutional rights on the subject of abortion. Unless corrected and clarified, the decision below will place a cloud on the rights of those hospitals situated in other states that would be adversely affected by similar decisions. Moreover, the validity of state statutes relating to the "right of conscience" (the right of private hospitals and individuals to refrain from participating in elective or nontherapeutic abortions) that have been adopted in various states throughout the country, both prior and subsequent to the decision of this Court in *Doe* v. *Bolton*, 410 U. S. 179 (1973), will be placed in serious jeopardy and would ultimately require decision by this Court to sustain their validity.

Further, the New Jersey decision is contrary to federal law, (the so-called "Church Amendment", 42 U. S. C. § 300a-7(a),

set forth in the Appendix to this brief) and is inconsistent with and contrary to the decision of the Court of Appeals for the Ninth Circuit in *Chrisman* v. *Sisters of St. Joseph of Peace*, 506 F.2d 308 (1974). The decision below is based on the erroneous assumption that receipt of state or federal funds by the hospital defendants would require the hospitals and those similarly situated to submit to the will of pregnant women and their attending physicians, contrary to religious and moral convictions of the institutions themselves.

3. The Decision Below Usurps Legislative Authority.

Finally, the New Jersey decision is violative of the constitutional division of governmental authority. It begins with the premise, based on its own judicial precedents, that private hospitals constitute "quasi-public" institutions, a classification subject to legislative determination. It then proceeds to suspend a direct legislative act of the State of New Jersey* by ruling that "non-sectarian non-profit" hospitals shall not be subject to or entitled to the provisions of that act. Petitioners' Appendix, p. A12. The decision further does violence to New Jersey's Health Care Facilities Planning Act, N. J. S. A. 26:2H-1 *et seq.*, by prescribing that the services that must be performed by hospitals in the State of New Jersey (*e.g.*, elective or nontherapeutic abortions) are to be determined by judicial pronouncement, contrary to legislative determination and specific legislative arrangement.

---

* N. J. S. A. 2A:65A-1 *et seq.*, "commonly referred to as the conscience law," in the words of the New Jersey Supreme Court, at Petitioners' Appendix, p. A11.

CONCLUSION

For the above reasons and those set forth in the Petition for Writ of Certiorari, we urge this Court to grant certiorari to review the judgment of the New Jersey Supreme Court in this case.

Respectfully submitted,

JAY H. HEDGEPETH
WILLIAM F. STEIGMAN
840 North Lake Shore Drive
Chicago, Illinois 60611
Attorneys for Amicus Curiae American Hospital Association

APPENDIX

42 U. S. C. §300a-7(a) provides as follows:

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not authorize any court or any public official or other public authority to require—

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to—

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.